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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 YESENIA PACHECO, *et al.*,

8 Plaintiffs,

9 v.

10 UNITED STATES OF AMERICA,

11 Defendant.
12

Case No. C15-1175RSL

MEMORANDUM OF DECISION
REGARDING LIABILITY

13 The liability phase of this matter was heard by the Court in a two day bench trial
14 commencing on January 22, 2020.¹ Plaintiffs Yesenia Pacheco, Luis Lemus, and their
15 minor child, S.L.P. by and through a guardian ad litem, filed this lawsuit alleging
16 negligence on the part of employees of NeighborCare Health Center, a federally-qualified
17 community health center, which resulted in an unwanted pregnancy and the birth of
18 S.L.P, who was diagnosed with bilateral perisylvian polymicrogyria.

19 **FINDINGS OF FACT**

20 By a preponderance of the evidence, the Court finds as follows:

21 On September 30, 2011, Gloria Rodriguez, an employee of NeighborCare Health
22 Center, mistakenly injected Yesenia Pacheco with a flu vaccine instead of the Depo-
23 Provera contraceptive Ms. Pacheco was there to receive. Depo-Provera is a highly
24 effective contraceptive, but the injections must be administered on a timely basis every
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26 ¹ Issues related to damages will be tried in a second phase.

1 eleven to thirteen weeks. Ms. Pacheco had scheduled the September 30th appointment to
2 receive a “on-time” Depo-Provera shot. She arrived for her scheduled appointment and
3 paid for the Depo-Provera shot when she checked in with the receptionist.

4 At a minimum, the standard of care in the circumstances presented here required
5 the medical provider to confirm what the appointment was for, to inform the patient of
6 what was to be done at the appointment and any potential side effects of the treatment,
7 and to obtain informed consent. On the morning of September 30, 2011, however, Ms.
8 Rodriguez was thinking only of walk-in flu shots when she encountered Ms. Pacheco.
9 She failed to confirm why Ms. Pacheco was there, to document consent to the flu vaccine
10 or a change in the orders, or to advise Ms. Pacheco of the side effects of a flu shot and/or
11 the consequences of skipping a Depo-Provera injection. Ms. Pacheco did not realize that
12 she had gotten a flu vaccine rather than the Depo-Provera shot until she called the clinic
13 to schedule her next Depo-Provera injection. At that point, the clinic indicated that its
14 records showed she had received a flu vaccine three months earlier and requested that she
15 come in for a pregnancy test. The test result was positive.

16 Ms. Pacheco had not planned or intended to become pregnant in the fall of 2011
17 and had taken affirmative steps to avoid an unwanted pregnancy. Had she received a
18 Depo-Provera injection on September 30, 2011, she would not have conceived. The
19 unintended pregnancy and birth of S.L.P. were foreseeable consequences of Ms.
20 Rodriguez’ error. The risk that a child will be born with a medical condition or disability
21 is within the general field of danger that arises when a medical provider fails to use
22 reasonable care in a procedure designed to prevent pregnancy.


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1 **CONCLUSIONS OF LAW**

2 Based on the foregoing facts, the Court finds that defendant was negligent in
3 failing to provide a Depo-Provera injection on September 30, 2011, and that the breach of
4 the standard of care resulted in and proximately caused injury. The injuries that were
5 foreseeable and proximately caused by defendant's negligence include an unwanted
6 pregnancy, S.L.P.'s birth, and medical expenses associated with her condition.² Plaintiffs
7 may also be able to show a loss of consortium at the damages phase of trial. Ms. Pacheco
8 had no duty or responsibility to do anything other than what she did: there is no
9 contributory or comparative negligence on her part.

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11 For all of the foregoing reasons, the Court finds that defendant is liable to plaintiffs
12 for damages in an amount to be proven at a second trial that will begin on Monday, July
13 6, 2020. A case management schedule will be issued.

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15 Dated this 10th day of March, 2020.

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17 Robert S. Lasnik
18 United States District Judge
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24 ² Based on the analysis set forth in the "Order Denying Defendant's Motion for
25 Dispositive Relief" (Dkt. # 80 at 2-6) and the evidence presented at trial, the Court finds that the
26 birth of a child with a medical condition or disability is a foreseeable result the negligence that
occurred here, that S.L.P. was born with neurological deficits, and that the extraordinary costs
and expenses related to and arising from that condition are recoverable under Washington law.